

IN THE
SUPREME COURT OF APPEALS OF WEST VIRGINIA
AT CHARLESTON
NO. 33662

STATE OF WEST VIRGINIA,

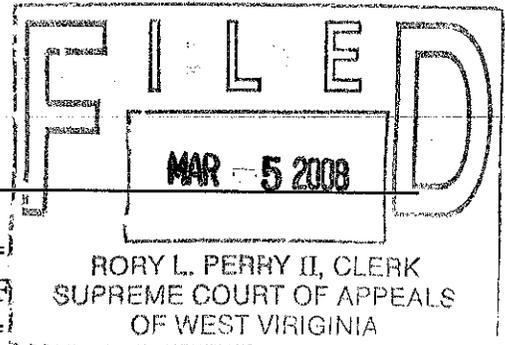
Appellee,

vs.

MONONGALIA COUNTY CIRCUIT COURT
CASE NO. 05-F-69

JAMES LEE BROOKS,

Appellant.



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APPELLANT'S REPLY BRIEF

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I.
REPLY ARGUMENT

1. Trial Court's Refusal to Dismiss Counts Two (2), Three (3), and Four (4) of the
Indictment

West Virginia Code § 49-5-10 is clear and unambiguous in its mandate and sets forth those requirements for waiver and transfer of a juvenile to adult criminal jurisdiction. W.Va. Code § 49-5-10(a) specifically states:

[a]ny motion filed in accordance with this section is to state, *with particularity*, the grounds for the requested transfer, including the grounds relied upon as set forth subsection (d), (e), (f), or (g) of this section, and the burden is upon the state to establish the grounds by clear and convincing evidence. (*emphasis added*).

The Appellee argues that there is nothing in the West Virginia Code that restrict the prosecution from bringing charges, which are different from those charges that served as a basis for waiver from juvenile to adult criminal jurisdiction. In citing State v. Day, the Appellee asserts that it is permitted to bring new, yet different charges, which arise out of the same "nucleus of operative facts." State v. Day, 911 A.2d 1042 (R.I. 2006). The Appellee fails to recognize that the West Virginia Code does not provide language allowing for the State of West Virginia to bring an indictment against the Appellant for any charges other than those charges for which the juvenile was waived to adult jurisdiction.

The Appellee incorrectly asserts that Rhode Island juvenile statute, as discussed in Day, is similar to the West Virginia statute. While one might be able to analogize W.Va. Code § 49-5-10(f-g) with § 14-1-7.1(a)(2) of Rhode Islands Gen.Laws, which take

into consideration the child's past history of offenses, history of treatment or the heinous nature of the offense, the West Virginia and Rhode Island statutes differ in one very important aspect which the Appellee fails to acknowledge.

§ 14-1-7.1(c) of Rhode Islands Gen.Laws specifically provides the following:

A waiver of jurisdiction over a child pursuant to this section shall constitute a waiver of jurisdiction over that child for the offense upon which the motion is based as well as *for all pending and subsequent offenses of whatever nature*, and the child shall be referred to the court which would have had jurisdiction if the offense had been committed by an adult. *(emphasis added)*.

It is this statutory language, upon which the prosecutor in Day, based the argument that a "prosecutor is free to charge a child as an adult in the Superior Court with any and all crimes arising from the conduct that formed the basis of the waiver." Id. at 1047. Though the Appellee in this case attempts to make the same argument as the state in Day, being that a prosecutor can bring new charges arising out of the same nucleus of operative facts, the West Virginia Code does not permit the Appellee to make such an argument. The West Virginia Code contains no language allowing waiver to extent to "all pending and subsequent offenses of whatever nature," as does the Rhode Island statute.

Further, Rhode Island is not the only state which has specific statutory language allowing a juvenile to be waived to adult criminal jurisdiction. As stated in Appellant's Brief, as filed with this Court, Tennessee and Kentucky have specific statutory language which allows for prosecutors to bring additional charges after a juvenile has been waived to adult criminal jurisdiction.

The West Virginia transfer statute is clear, as no provisions have been enacted by the Legislature which would allow the prosecuting attorney to bring additional charges after waiver to adult court has been effected. This Court should apply the traditional rule that "where the language of a statute is clear and without ambiguity, the plain meaning is to be accepted without resorting to the rules of interpretation." State v. Dietrick, 185 W.Va. 23, 404 S.E.2d 415 (1991), *citing* State v. Elder, 152 W.Va. 571, 165 S.E.2d 108 (1968). There is the distinct absence of statutory language in the West Virginia Code, to allow the Appellee in this case to bring an indictment against the Appellant on additional charges other than those which he has been waived from juvenile to adult criminal jurisdiction.

The Appellee seeks to analogize the role of the prosecuting attorney in West Virginia and its discretion to prosecute a juvenile as an adult, with the role of the prosecuting attorney in Kansas, State v. Randolph, in an effort to influence this Court to adopt the rationale of Randolph. State v. Randolph, 876 P.2d 177 (Kan. 1994). The Appellee fails to address those prior rulings of this Court where it has been determined that the transfer statute should be construed "against the government and in favor of the individual." State v. D. D., 172 W. Va. 791, 798, 310 S.E.2d 858, 862 (1983). Further, should the Court find that the language contained in the transfer statute is ambiguous, though the Appellant asserts it is not, "a statute is interpreted according to the well-established principle that transfer should be the exception and not the rule, ambiguous language should be construed against transfer." Id.

Certainly, if it were the intent of the West Virginia Legislature to allow the prosecuting attorney to charge a juvenile with additional or subsequent charges or charges arising out of the same factual circumstances for which the Appellant had been transferred from juvenile to adult criminal jurisdiction, the West Virginia statute would contain specific language allowing the prosecuting attorney to do so. Therefore, this Court must apply the statute as written, given the statutory language is unambiguous in its distinct absence of provisions allowing for continued jurisdiction of juveniles who have been transferred to criminal adult status without being allowed a transfer hearing on all charges for which an indictment is brought.

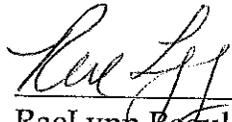
II.

CONCLUSION

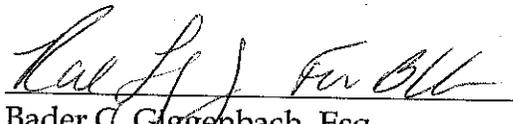
The statute regarding transfer of a juvenile to adult criminal jurisdiction in the State of West Virginia is void of any language which would allow the Appellant to be transferred to adult criminal jurisdiction on one charge and allow the State to indict on three additional charges for which transfer was not requested. The trial court cannot retain adult criminal jurisdiction on subsequent criminal charges filed against the Appellant arising out of the same facts, when the State, which should have moved the Appellant's transfer to adult criminal jurisdiction on all charged for which the Appellant was indicted, failed to do so.

RESPECTFULLY SUBMITTED,
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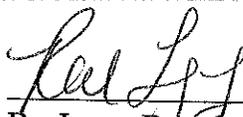
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that he served a true copy of the within APPELLANT'S REPLY BRIEF, via United States mail postage prepaid, on the 4th day of March, 2008, upon the following named counsel:

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